United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

S.A.M. DATE: September 20, 1999

TO: Dorothy L. Moore-Duncan, Regional Director Region 4

FROM: Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Teamsters Local 401 (UPS)

Cases 4-CB-8115, 8310 536-2581-3307-5000 536-2581-3307-5001 536-2581-3307-5010 536-2581-3307-5040 536-2581-3307-5050

This Section 8(b)(1)(A) $\underline{\operatorname{Beck}}^1$ case was submitted for advice on four issues: (1) whether the accountant's verification of information contained in the $\underline{\operatorname{Beck}}$ disclosure given to an objector was deficient; (2) whether the $\underline{\operatorname{Beck}}$ disclosure was otherwise inadequate; (3) whether the Charging Party was overcharged for expenses claimed to be chargeable to her; and (4) whether the Union's allocation of the parent international union's per capita expenses was improper.

FACTS

The Union, Teamsters Local 401, represents certain employees of United Parcel Service. The collective-bargaining agreement contains a union-security clause. In 1999, as the result of a previous charge, the Union gave employees a Beck notice. Of all the unit employees, only the Charging Party has opted to object to paying full dues. The Union has given the Charging Party a Beck disclosure, which consists of approximately 70 lines of categories.

The disclosure was described as follows in a June 3, 1998 letter to the Union from a firm of certified public accountants:

You have requested that [we] compute the "financial core" fees chargeable for 1998 to non-members based upon the total administrative expenses for [1997].

¹ Communications Workers v. Beck, 487 U.S. 735 (1988).

The total expenses for [the Union for 1997] were \$565,681. The total expenses includes amounts that were not applicable to operations or related to other service charges of the Local. These expenses amounted to \$40,944 and were adjusted outright in that they are not dues related functions. The remaining \$524,737 was then considered for the computation.

A review of the financial statements indicates that \$30,223 was considered non-chargeable expenses. The non-chargeable activities represents [sic] 5.76 percent of the net expenses (\$30,223/\$524,737).

[We have] based this computation upon the advice that all activities of [the Union], other than those listed in the computation as nonchargeable, related to contract negotiations or actions to uphold union activities.

Of special note in the disclosure are the following:

- The disclosure reported the Union paid Per Capita Taxes of \$114,900, of which \$85,248 was chargeable and \$29,652 was not.
- The disclosure reported death benefits payments of \$65,622, all of which the Union claimed were chargeable.
- The disclosure reported \$40,944 of nonchargeable expenses, which were then subtracted from both the total and the chargeable expenses as "expenses not applicable to operations or related to other service charges." In particular, it stated:

EXPENSES NOT APPLICABLE TO OPERATIONS OR RELATED TO OTHER SERVICE CHARGES	Total Expenses	Chargea Expenses	ble	Non- Chargeable Expenses
Refunds-Dues	5,068			5,068
Refunds-Initiations	125		125	
Refund of Overpayment	5 , 392			2 , 392
On Check-Offs				
Refunds - Other	1,097			1,097
Jackets and Hats	17,797			17,797
Building Fund Expense	9,100		9,100	

75th Anniversary Expense 5,365 5,365

TOTAL EXPENSES NOT APPLICABLE 40,944 40,944

NET EXPENSES 524,737 494,514 30,223

• The sole remaining nonchargeable expenses were the Per Capita Taxes, above, "Funds for Transmittal to Members" of \$77 and "Organizing Expense" of \$494.

During the period from January 1998 through April 1999, the Charging Party paid \$494 in full dues. The Union has rebated to her 5.76% of full dues, which it computed to be \$26.10. It also rebated her contribution to death benefits, \$3.00 per month, or \$48.00.

The Charging Party claims that the $\underline{\text{Beck}}$ disclosure is defective in that a portion of overhead expenses should have been deemed nonchargeable, and in that the disclosure failed to provide a breakdown of the per capita tax paid to the parent International Union.

ACTION

We concluded that a Section 8(b)(1)(A) complaint should issue, absent settlement, alleging that there is no evidence that the accountant has performed a verification. There is no merit to the allegations that the Beck disclosure is defective insofar as it faults the failure of the Union to provide a breakdown of the parent International's expenses, or in any other respect; hence these allegations should be dismissed, absent withdrawal. As there is insufficient evidence that the Union has improperly extracted moneys from the Charging Party to which the Union was not entitled, that allegation of the charge should also be dismissed.

1. There is no evidence that the accountant has performed a verification.

 $^{^{2}}$ [FOIA Exemptions 2 and 5

In American Federation of Television & Recording

Artists (KGW Radio), 3 the Board defined its requirement that a Beck disclosure must be audited by an independent accounting firm. 4 It contrasted the terms "compilation," "review," and "audit." It explained that the term "audit" has an established meaning in the accounting profession, and involves (a) "an independent verification of selected transactions within the major categories of financial information presented in the accountant's report" and (b) the accountant's opinion letter certifying that "the report presents fairly, in all material respects, the financial information which was the subject of the audit." 5

The function of the audit is to determine "that the expenses claimed were actually made." It is not the accountant's responsibility to determine whether particular expenses are chargeable or not. 7

In the instant case, the Union has presented no evidence that such a verification has been performed. The accountant's letter indicates that the firm made chargeability determinations, not that it determined whether the Union actually sustained the claimed expenses. The Region should issue complaint so alleging.

2. The Union's $\underline{\text{Beck}}$ disclosure was otherwise adequate.

 $^{^3}$ 327 NLRB No. 97 (1999), motion for reconsideration denied 327 NLRB No. 147 (1999).

 $^{^4}$ Id., slip op. at 3.

 $^{^{5}}$ Id. at 3-4.

⁶ Td. at. 4.

⁷ Ibid.

⁸ Compare <u>Teamsters Local 618 (Chevron Chemical Corp.)</u>, 326 NLRB No. 34, slip op. at 2 (1998) (union letter stating that disclosure was based on "an independent accountant's report" was sufficient).

A union's <u>Beck</u> disclosure must adequately present sufficient information to objecting employees. Thus, a union's <u>Beck</u> disclosure is lawful if it provides enough information to permit objectors to determine, in an intelligent manner, the types of activities for which the union is charging and to decide whether to challenge the charges for such expenses. Absent evidence of an intent to mislead the objector, a disclosure may suffice although it does not provide highly detailed information or does not properly classify expenses as chargeable or nonchargeable. However, the Board stated in <u>Dyncorp</u>9 that while the union must disclose to the objector the major categories of expenses, the union enjoys considerable discretion in deciding how many subcategories of spending to group together.

In the instant case, the disclosure reveals a sufficient number of categories to permit objectors to determine, in an intelligent manner, the types of activities for which the Union is charging and to decide whether to challenge the charges for such expenses. Errors in chargeability determinations, if any, do not render the disclosure unlawful. 10

3. The Union was not obligated to furnish a breakdown of the International Union's chargeable and nonchargeable expenses.

As noted, the Charging Party claimed that the Union violated the Act by failing to furnish a breakdown of the expenses of the Union's parent International Union. In Teamsters Local 166 (Dyncorp Support Services), supra, slip op. at 5, the Board expressly rejected this claim.

4. Chargeability

First, and as noted, the Union's disclosure listed a number of items as nonchargeable, but at the end of the

 $^{^9}$ Teamsters Local 166 (Dyncorp Support Services), 327 NLRB No. 176, slip op. at 5 (1999).

 $^{^{10}}$ See <u>Teamsters Local 75 (Schreiber Foods)</u>, 329 NLRB No. 12, slip op. at 3 (1999).

disclosure, the Union's stated nonchargeable activities consisted of only three specific items: Per Capita Taxes, totaling \$114,900, of which \$85,248 were claimed to be chargeable and \$29,652 were not, and "Funds for Transmittal to Members" of \$77 and Organizing Expense of \$494. The Union had subtracted \$40,944 from both total expenses and nonchargeable expenses as "Expenses not applicable to operations or related to other service charges," as listed above.

The Union's treatment of the first four of the "Expenses not applicable" -- Refunds-Dues, Refunds-Initiations, Refund of Overpayment on Check-Offs, and Refunds - Other -- was proper. The four items are simply reductions of the Union's receipts of dues and initiation fees, which clearly were not funded by dues.

We cannot determine whether the fifth, sixth and seventh items -- Jackets and Hats, Building Fund Expense, and 75th Anniversary Expenses -- were paid for from dues and initiation fees, or from such other sources as assessments, funds from the parent International, etc. If the evidence had established that these items were funded by nondues-noninitiation fee revenues, they were properly excluded from the computation of the Union's expenses. However, if they were funded by dues or initiation fee revenues, they were nonchargeable expenses and were improperly excluded from the Union's calculations of its nonchargeable expenses. There is no evidence as to the source of the funding.

"Guidelines Concerning Processing of <u>Beck</u> Cases," GC Memorandum 98-11, August 17, 1998, p. 5, imposes on a charging party a duty to explain why a particular expenditure treated by a union as chargeable is in reality not chargeable, and "to present evidence or to give promising leads that would lead to evidence that would support that assertion." The Charging Party has not done so, and there is currently insufficient evidence to support a complaint allegation concerning the Union's treatment of the expenses described above.

We reach a similar conclusion with respect to overhead and administrative expenses (overhead). In the past we consistently took the position that a union which claims nonchargeable expenses must allocate a percentage of its

overhead costs as nonchargeable based on the overall percentage of nonchargeable expenses. Overhead was said to include the Section 9(a) representative's office rent, insurance, equipment and its maintenance and repair, automobile expenses, office supplies, utilities, printing, postage, telephone and telegraph, clerical salaries, legal and audit fees, meeting and conference expenses, bank charges, depreciation and interest, and real estate taxes. Our position was that when a union admitted spending money on a nonchargeable activity, e.g., political activity on behalf of a certain candidate, the activity required the use of support staff time, office space, and the like.

However, on September 1, 1999, the Board issued Teamsters Local 75 (Schreiber Foods), 329 NLRB No. 12. In Schreiber, the complaint alleged, inter alia, that the Beck disclosure was inadequate. According to the ALJ, the General Counsel alleged that certain expenses were improperly charged in that 100% of salaries and 100% of eight other categories of expenses were claimed to be chargeable, but some of these costs were in reality attributable to various non-chargeable activities. ALJD slip op. at 19. The ALJ, id. at 20, stated that two issues were whether the Beck disclosure was adequate and whether the numbers were "appropriate." Thereafter, after analyzing Supreme Court and Court of Appeals cases dealing with chargeability, the ALJ, id. at 21, found that the union's claim that only 1.1% of its expenses were chargeable was so implausible as to be a per se violation of the Act. He concluded that the union violated Section 8(b)(1)(A) both by failing, in the Beck disclosure, to give objectors sufficient information and by overcharging them. His proposed order required the union to refund unspecified amounts of dues and fees not properly chargeable.

However, a majority of the Board said, slip op. at 4:

District 1199P, SEIU (Carpenter Care Center), Case 6-CB-10113, Advice Memorandum dated March 4, 1999; Teamsters
Local 399 (Universal Studios), Cases 31-CB-7832, -7977,
Advice Memorandum dated August 26, 1997; UFCW Local 44 (Bon Marche), Cases 19-CB-7111, -7429, Advice Memorandum dated
February 17, 1994; Graphic Communication International
Union, Local 582 (Lawson Mardon Label), Case 5-CB-7024,
Advice Memorandum dated August 24, 1992.

[Member Brame] 12 suggests that the Union's [Beck disclosure] was entirely unreliable. For example, he says that the [U]nion reported a nonchargeable expenditure for education and publicity and yet the [U]nion claimed that all "salary" expense was chargeable. Our colleague says that this cannot be so, i.e., that there had to be some salary expenditure for education and publicity. We disagree. It is at least possible that a contractor was hired to do the education and publicity...

In light of the foregoing statement, we can no longer draw the inferences we have drawn in the past. In order to establish that an objector was overcharged for overhead, the General Counsel must demonstrate the relationship between each nonchargeable activity, e.g., political activities on behalf of a certain candidate, and each of the overhead items involved, e.g., telephone calls, printing, travel and entertainment, support staff help, and the like. Only those overhead expenses specifically attributable to nonchargeable activities should be treated as nonchargeable. For example, if an unpaid union official engages in political activity while working out of his house and is reimbursed by the union only for telephone, travel and entertainment costs, only those expenses, not a portion of union building rent, would be nonchargeable. Similarly, we would not treat as nonchargeable the same portion of overhead as is treated as a nonchargeable portion of per capita payments, absent evidence that a portion of overhead was actually spent on calculating or remitting per capita payments.

Here, the Union admits that it had some nonchargeable expenses but it nonetheless treated overhead as 100% chargeable. The Charging Party has provided no evidence that the Union has improperly charged for any of the categories of its overhead expenses. Absent additional

¹² Member Brame, dissenting in relevent part, slip op. at 12, found that the disclosure was "worse than 'woefully inadequate'" and that even if the 1.1% said to be nonchargeable were accurate, all other expenses of the union could not then be 100% chargeable.

evidence of the kind that GC Memorandum 98-11 prescribes, which an objector can obtain by challenging the union's disclosure, the allegation that the Union improperly charged for 100% of overhead¹³ should be dismissed, absent withdrawal.

As to the chargeability of the Charging Party's death benefits, the Supreme Court held that death benefits are not chargeable if unavailable to nonmembers. 14 Thus, the Union would have violated the Act by requiring the Charging Party to pay for benefits for which she was not eliqible. However, of all the unit employees, the Charging Party alone is a nonmember objector who is not participating in the death benefits plan. The Union asserted that the portion of dues funding death benefits was chargeable and amounted to \$3 per month, but rebated to the Charging Party her entire contribution to the death benefits fund. Charging Party makes no claim that the \$3 figure is insufficient. As the Union has thereby mooted the issue of the chargeability of death benefits to the Charging Party, a complaint allegation that the Union improperly charged for members-only death benefits is not warranted.

¹³ See also <u>Schreiber Foods</u>, supra, slip op. at 4, where in discussing the adequacy of a disclosure, the Board stated that when an objector "doubts [that a contractor was hired to perform activities listed as nonchargeable] he can file a challenge, and the Union will be put to its proof."

¹⁴ Ellis v. Railway Clerks, 466 U.S. 438, 455 fn. 14 (1984).

Accordingly, the Region should proceed as authorized above. $^{15}\,$

B.J.K.

 $^{15}\ \mbox{If the Region encounters}$ any additional Advice issues, it should resubmit the case.